Comments of the Financial Institutions Energy Group
Leakage Issues in RGGI
October 31, 2011

The Financial Institutions Energy Group (FIEG) is comprised of investment and commercial banks that provide a broad range of financial services to all segments of the U.S. and global economy. Its members and their affiliates play a number of roles in the wholesale power and natural gas markets, including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors. FIEG members are active participants in the various electricity markets in North America, including the markets encompassed by the RGGI program. In response to the public program on "leakage" issues presented in New York on October 11, FIEG offers the following comments and observations.

<u>Overview and Recommendation</u>

FIEG members have had extensive experience vetting possible solutions to electricity-related leakage issues associated with California's AB32. FIEG appreciates efforts to make RGGI more effective. However, when combined with the evidence and analysis presented at the October 11 conference, we believe the record supports maintaining the status quo at this time- -that is, doing nothing. The core reasons are very simple and straightforward. First, there does not appear to be any evidence that "leakage" has constituted a significant component of the electricity supply in RGGI jurisdictions to date. Second, it does not appear that any party has made a case that this situation is likely to change in the foreseeable future. Given the lack of past or anticipated near future impact to the RGGI program from "leakage", implementing any kind of leakage management program at this point in time becomes a solution in search of a problem. Therefore, given the administrative challenges inherent in such a program, most of which were discussed at some length during the October 11 conference, "no change" is clearly the best decision, in FIEG's view. At most, it may be appropriate to monitor the situation and revisit in a few years should "leakage" become a real concern within the RGGI program

<u>Brief Identification and Discussion of Potential Challenges from Implementing a Leakage Management Program.</u>

- Identifying and/or assigning the emissions profile of any unit of imported energy will be difficult at best. Unlike sources outside of California, where power is largely scheduled and tracked along physical delivery paths, much imported power that moves into RGGI is sourced from various ISOs, which function on a pooled basis. Determining an appropriate emissions component for an import has many problems even in a California/WECC context. Those problems are likely to be even more difficult in RGGI.

- Large amounts of RGGI imports originate in New Brunswick, Quebec and Ontario. A very high proportion of this power is already sourced from low or zero GHG emissions sources such as hydro and nuclear. In addition, Ontario has now committed to a major coal-plant phase-out. Therefore, it seems reasonable to project that power sourced from those jurisdictions will be getting even "cleaner" prospectively. In that situation, the risk of power from those jurisdictions obtaining an unfair competitive advantage due to not having to account for their GHG emissions seems de minimis and declining. Furthermore, Quebec and Ontario appear likely to join WCI in the foreseeable future, becoming capped jurisdictions in their own right.
- Managing leakage would require the addition of a significant amount of administrative tracking infrastructure. This would add cost without a clear offsetting benefit. How to allocate the funding of those costs among the RGGI jurisdictions might also prove problematic.
- The preponderance of legal analysis to date suggests that imposing some sort of compliance obligation on imported power, via a "First Jurisdictional Deliverer" or similar structure, will pass legal muster. However, there are well-reasoned minority views that argue that it won't pass muster under the Commerce Clause of the US Constitution, and in any case, the issue has not been adjudicated. Implementing a leakage program runs a not insignificant risk of having to expend resources to defend it in court. This should never be a per se reason not to implement an otherwise worthy program, but is a factor worth weighing when an issue is not pressing.
- Starting in 2013, RGGI will have the luxury of observing a "real world experiment" on import emissions management, as the California program gets underway. Watching and waiting will provide tremendous ability to identify flaws and needed improvements in a First Jurisdictional Deliverer program, well in advance of any potential future need to actually implement it in the RGGI footprint.
- Finally, one factor that is sometimes cited as a reason to address "leakage" in RGGI is imports from coal fired generation in Western PJM to load centers in the East that lie within RGGI states. On this front, PJM has projected coal retirements resulting from EPA regulations that could help mitigate the concern.

FIEG appreciates the opportunity to comment on RGGI's evaluation of the "leakage" issue attributable to electricity imports. For follow-up communications, FIEG can be reached via CCunningham@isda.org.